

1 UNITED STATES DISTRICT COURT  
 2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
 3 (Charlotte Division)

4 -----x  
 5 UNITED STATES OF AMERICA, :  
 6 Plaintiff, :  
 7 :  
 8 :  
 9 vs :Criminal Action 3:16-CR-221  
 10 :  
 11 :  
 12 ROBERT LESLIE STENCIL, :  
 13 ET AL, :  
 14 Defendants:  
 15 -----x

11 August 18, 2018  
 12 Asheville, North Carolina

13 The above-entitled action came on for a Status  
 14 Conference Hearing before the Honorable MAX O. COGBURN,  
 15 Jr., United States District Judge, in the 2nd Floor  
 16 Library, in the Asheville courthouse, commencing at 1:00  
 17 p.m.

18 **APPEARANCES:**

19 On behalf of the Plaintiff:

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21 United States Department of Justice  
 22 Criminal Division, Fraud Section

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25 On behalf of the Defendant Robert L. Stencil:

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I N D E X

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On behalf of the Defendant Martin Delaine Lewis:

**SCOTT HADDEN GSELL, Esquire**

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On behalf of the Defendant Michael Allen Duke:

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Court Reporter's Certificate.....27

1                                   P R O C E E D I N G S

2           THE COURT:   Let's go ahead and call the hearing to  
3 order.   We've got a couple of things this afternoon.   We  
4 have motions to continue and to set something in January,  
5 and, also, a motion to sever.   We'll hear from whoever  
6 wants to start.

7           MR.   HIRSCHHORN:   Well, Joel Hirschhorn for  
8 Michael Duke, along with Melissa Owen.   I filed a motion  
9 for a status conference because I thought there was a bit  
10 of a mess in terms of health issues, and I thought maybe  
11 we ought to try to focus on it.   I have not -- I did, in  
12 my motion for status conference, reference the fact I was  
13 contemplating a severance, which may or may not be  
14 necessary, depending on health issues and what the Court  
15 does.

16           I had a conversation -- what the Court does on  
17 scheduling.   Actually, I filed that motion before I heard  
18 about Mr.   Stencil's health issues.   So I don't exactly  
19 know what his issue is, but I had spoken with Jeremy  
20 Smith about his client -- briefly about his -- not Jeremy  
21 -- I'm sorry.   I spoke to Scott Gsell about his client's  
22 health issues.   So I thought maybe we could bring it to  
23 the Court's attention.   Because the likelihood of trying  
24 this case on Monday -- on Tuesdays and Thursdays -- I  
25 mean I know things are different today than they were

1 back in the day, but I thought maybe we need to get these  
2 things on.

3 THE COURT: Scott, tell me about your client.

4 MR. GSELL: Martin Lewis has kidney failure, and  
5 it's pretty far along. He was on the waiting list for a  
6 kidney donation but, because of the pending charges, he's  
7 been taken off of that list. He does do dialysis three  
8 days a week: Monday, Wednesday, Friday. Last I talked  
9 to him he was -- you know, he can get ready in the  
10 morning and he goes in -- you know, it's in the early  
11 afternoon. It takes about four or five hours, and then  
12 that completely wipes him out. He goes home and he ends  
13 up sleeping through the rest of the day and the evening,  
14 and then he wakes up in the morning and eats a little  
15 broth. So he does require dialysis three days a week.

16 THE COURT: Of course if we -- you know, Scott,  
17 let's suppose we were to sever the case and try the  
18 others. Then he's going to be delayed and he's going to  
19 be on dialysis, and they're not going to put him on the  
20 transplant list. So the longer this thing gets delayed,  
21 the more likely it is he'll never go to trial for the big  
22 reason that he doesn't survive. So, I mean, what do you  
23 think about him not going to trial at this time and being  
24 severed?

25 MR. GSELL: Is that being directed at me, Your

1 Honor?

2 THE COURT: Yes, sir.

3 MR. GSELL: Is that being directed to me, Scott  
4 Gsell?

5 THE COURT: Yes. Can you hear me? Yes.

6 MR. GSELL: I heard you, Your Honor. The only  
7 thing I can tell you is that at this point in time  
8 Mr. Lewis has indicated the case is for trial. I  
9 understand the logistical nightmare of doing it on  
10 Tuesdays and Thursdays only. I would need to confer with  
11 his medical doctors. I don't believe he is at, you know,  
12 what he would consider to be the final end stages of  
13 renal failure. He seems to -- you know, he deals mostly  
14 with child care issues and things around the house, and  
15 he seems to be able to do that. I don't know if severing  
16 Mr. Lewis from the rest of the parties -- I don't know  
17 that there would be that much of a delay and that his  
18 health would decline. But, before I could, you know,  
19 absolutely commit to that I would need to speak with his  
20 medical doctors.

21 In the timeframe that this is intending, I have  
22 met with Mr. Martin in person, spoken with him, and we  
23 seem to be able to do that just fine. I don't know, you  
24 know, about the stress of the trial and dealing with, you  
25 know, significant trial preparation. I'm not sure how

1 that would physically affect him at this point in time.

2 THE COURT: All right. We've got a couple of --  
3 we've got a couple of cases going on right now, and the  
4 government -- the fraud division, I guess, is handling  
5 the Stoszi case too?

6 MR. FENTON: That might be Mr. Down.

7 THE COURT: All right. So we've got a couple of  
8 cases going on and one of these needs to be tried in  
9 September. We've got a term. And unless the government  
10 is saying that for some reason they think that the --  
11 that the defense has not had time to review all this  
12 stuff --

13 MR. FENTON: No, Your Honor. The government's  
14 position is we are ready to go to trial in September. We  
15 believe it's in the public's interest to go to trial at  
16 that time.

17 With respect to Mr. Lewis, we're certainly willing  
18 to make accommodations. Obviously, it would require an  
19 extensive conversation and dialogue with his physician.  
20 We looked into some of the options that are available in  
21 Charlotte and there are many options that are available  
22 for dialysis some of which are quite close to the  
23 courthouse and have good hours.

24 There's one, which is Fresenius, which is the  
25 network that Mr. Lewis already visits, I understand, for

1 dialysis. It's about ten to 15 minutes away from the  
2 courthouse by car. It's open Monday to Saturday, which  
3 would allow Mr. Lewis an opportunity to have dialysis on  
4 one day on the weekend which would, I think, help the  
5 trial schedule overall.

6           Although this sounds somewhat odd, it's opened  
7 23.5 hours a day. So it's not a full 24 hours but you  
8 could pretty much choose whenever he wants to go, save  
9 for that one-half hour. So there are options we could  
10 look at to accommodate his schedule, and the government  
11 would be willing to make whatever accommodations are  
12 necessary.

13           Also, we don't think those accommodations would in  
14 any way prejudice the other defendants in the case. Our  
15 concern is if we try to sever the case we're essentially  
16 going to have to try the case next --

17           THE COURT: That's the way it is with every case.

18           MR. FENTON: We don't see many differences -- we  
19 think will there would be a lot of overlap with respect  
20 to the witnesses and whatnot. We think there would be a  
21 burden not only on the government and its resources but  
22 also on the witnesses as well.

23           THE COURT: I'll have to hear from the doctor. I  
24 would be against severing it if there is a way that it  
25 can be done in order. The Saturday helps, but it would

1 also have to be the Tuesday and Thursday, I guess, and  
2 that would switch hit him from Monday, Wednesday, Friday  
3 to Tuesday, Thursday, Saturday on the dialysis. But it  
4 would have to be something --

5 MR. GSELL: I understand.

6 THE COURT: Yes, sir.

7 MR. GSELL: Right. I understand that, Your  
8 Honor. My concern would be on the days when Mr. Martin  
9 is doing his dialysis that his ability to meet and confer  
10 with me at the appropriate level that would need to be  
11 done at trial -- well it would be pretty intense. I will  
12 get additional information from his doctor, but my  
13 concern would be that while he's at dialysis I wouldn't  
14 be able to meet and confer with him to do trial  
15 preparation, cross-examination of witnesses, presentation  
16 of evidence. His mind may very well be focused more on  
17 getting his treatment. And once the treatment is done,  
18 like I said earlier, the indication is he's really  
19 completely wiped out physically and needs his rest.

20 THE COURT: Yeah. Well I certainly want to hear  
21 -- Scott, I want to hear from the doctor in detail. I  
22 don't want just some little note from the doctor. I want  
23 to hear from the doctor, in detail, about his ability to  
24 do it. I don't know how long he's had this condition,  
25 but if it was during the period of time of this he

1 certainly was able to participate in business, either  
2 legal or otherwise, during that period of time.  
3 Frequently, you find the folks who are able to do these  
4 things have a hard time concentrating when it comes down  
5 to federal court. I need to hear something about -- I  
6 need to hear something from the doctor in detail.

7 MR. GSELL: Well what I would propose, Your  
8 Honor, is I'll contact the doctor, obviously, to a larger  
9 -- on Mr. Martin's behalf. I don't think that would be a  
10 problem. I will explain to the doctor what our current  
11 situation is, what our logistics are, and I will ask the  
12 doctor for, essentially, his opinion on the viability of  
13 whatever alternatives may exist here, and I'll look into  
14 those, too.

15 And I'll ask the doctor what his opinion is with  
16 regard to Mr. Martin's ability to undergo the treatment,  
17 deal with the aftercare, so to say, or the after period,  
18 and then engage in essentially, you know, being involved  
19 in his trial at the level that he needs to be in order  
20 for him to be, you know, fully involved and competent so  
21 to say.

22 THE COURT: Yeah. Because he's going to have to  
23 -- Scott, he's going to have to be involved at some  
24 point. We're not going to have the "poor defendant"  
25 trial where the jury watches the defendant stagger out to

1 get his dialysis every day, and we're skipping days.  
2 Whether he tries it together or alone we're not going to  
3 do that. We're going to try the case in a way that the  
4 jury is going to be, to the extent it can be, unaware of  
5 his medical condition.

6 MR. GSELL: I understand. Hopefully, his  
7 nephrologist can shed some light on that for the Court.  
8 And I will -- I will contact -- this trial probably will  
9 go into Tuesday or Wednesday, but I will get the  
10 information over the weekend and I'll try to reach out to  
11 the doctor some time on Monday. I'm not sure how long  
12 the response will take, but as soon as I'm finished with  
13 this then I can engage in a lengthy conversation. I'll  
14 check in with the doctor and then I will reduce that  
15 information, I guess, into a memorandum, and I'll file it  
16 with the court. Or do you want me -- is that what the  
17 Court would want?

18 THE COURT: I want a report directly from the  
19 doctor. And if we need -- if I need to have him brought  
20 in to testify about it I'll bring him in to testify about  
21 it. I want a realistic assessment of the defendant's  
22 physical condition. Because at some point -- at some  
23 point, absent this physical condition going south on him  
24 to the point where he can't try the case, he's going to  
25 have to try this case either by himself or with these

1 folks. And I'm not going to -- I'm not going to have --  
2 I'm going to make it as easy as I can on him, but I'm not  
3 going to have two days of trial followed by all this --  
4 and then explain to the jury that the defendant is sick  
5 so that that --

6 MR. GSELL: Sure.

7 THE COURT: -- so that that infects the jury's  
8 decision. Simply put, there's not supposed to be any  
9 bias, prejudice, or sympathy.

10 MR. HIRSCHHORN: Your Honor, can I --

11 THE COURT: Yes, sir. Mr. Hirschhorn wants to say  
12 something, Scott.

13 MR. HIRSCHHORN: This is not my issue but I did  
14 reference a motion in my case, a motion in the Gunter  
15 case, that really is as close to all fours as you can  
16 get. The only reason it comes from me is because if  
17 we're in trial with Mr. Lewis it's going to be a burden  
18 it's going to triple the time. If we're on Tuesday or  
19 Thursday, or Monday, Wednesday, whatever it is, it's  
20 going to double or triple --

21 THE COURT: We can't try it that way. I  
22 understand you and I agree with you. We can't try it  
23 that way. If his dialysis can be done in a way that we  
24 can do it, and not a way he wants to do it or is doing it  
25 now, then that might be an option that we do. But I

1 agree with you we're not going to try it on Tuesdays and  
2 Thursdays and skip all these other days. We're not going  
3 to do that.

4 MR. HIRSCHHORN: The other thing is, could I  
5 respectfully suggest to counsel that whatever medical  
6 reports he get are filed under seal? Because you  
7 correctly observed you did not want the jury and everyone  
8 has access to PACER.

9 THE COURT: Right.

10 MR. GSELL: Oh, yeah. That was the intent all  
11 along.

12 THE COURT: Okay. Very good.

13 MR. GSELL: I'll make it available to the Court  
14 and then allow the Court to decide what information  
15 should be released.

16 MS. OWEN: I want to adjust so the Court has full  
17 information. At some point when we had talked about a  
18 September scheduling there was a question about  
19 availability of all counsel. At that point, I wasn't  
20 contemplating the possibility of September and trying  
21 this on partial days of the week.

22 THE COURT: We're not going to do that. That's  
23 not going to happen. We're going to try this case. I  
24 mean the days may be shortened a little bit depending on  
25 what he needs, if it's possible to do it. I'm not saying

1 it's possible yet. But if it's going to be two days a  
2 week then we're -- then it's probably -- he's probably  
3 going to be severed and you guys are going it alone.

4 MR. HIRSCHHORN: Okay. The other issue I was  
5 concerned about was some sort of report from Mr.  
6 Stencil's lawyer.

7 MR. DAVIS: Yeah. So Mr. Stencil's medical  
8 condition is still a little bit up in the air. He did  
9 have a heart attack when he was arrested, and that's our  
10 understanding, in the driveway. At this point we don't  
11 have medical records yet since it happened, I guess, two  
12 weeks ago today. I understand he is on bed rest and  
13 can't -- out of work for two to four weeks and is going  
14 to have a program of rehabilitation that will be at least  
15 more than one time a week. We don't know the details.  
16 Apparently, the orientation for the rehabilitation is  
17 next week and we'll learn more at that time.

18 Regarding the effects of the stress of the trial  
19 so recently after having the stent put in. At this  
20 point, I can't really give the Court any good idea  
21 because we just don't have enough information.

22 THE COURT: Yeah, and we'd have to have something  
23 like that. It's not unusual. When they arrested Boonie  
24 Fletcher he collapsed, and they rushed him to the  
25 hospital and the diagnosis was temporary paralysis

1 brought on by sudden arrest. That's the doctor that's  
2 exactly what he wrote in the report.

3 MR. DAVIS: This one, it seems, is a little more  
4 real world.

5 THE COURT: It sounds like it. But I do need to  
6 see what happened.

7 MR. DAVIS: Of course.

8 THE COURT: Yeah. Okay. What says the  
9 government?

10 MR. FENTON: Subject to confirmation by  
11 Mr. Stencil's physicians, the government is, of course,  
12 amenable, if there is a medical condition with  
13 Mr. Stencil and he requires treatment, to permit a brief  
14 continuance to allow him to recover and participate in  
15 the trial. What the government is concerned about is a  
16 situation like we had before where, essentially, the  
17 introduction of new counsel, or an attempt to retain new  
18 counsel, leads to a further continuance.

19 THE COURT: Right.

20 MR. FENTON: We had previously dealt with this  
21 situation with Mr. Anderson where Mr. Stencil was going  
22 to sell his house, retain Mr. Anderson, and then Your  
23 Honor had given him the opportunity to do that. We were  
24 agreeable at that time to allow for a continuance. So  
25 that --

1           THE COURT: The Court likes to see private counsel  
2 in a case, where possible, so that lawyers can -- people  
3 can have the lawyers they want, and lawyers can pay their  
4 bills.

5           MR. FENTON: Right. He can have his choice of  
6 counsel. What we would be concerned about is a situation  
7 where Mr. Stencil recovers, he's ready for trial if he's  
8 physically ready to go to trial, and Mr. Anderson makes  
9 an appearance again, and we have to go through that  
10 process. So we just want to flag an issue for the Court  
11 down the road. We're agreeable for the medical and to  
12 allow for recovery to the medical situation, but we don't  
13 want the case to go on in perpetuity.

14          THE COURT: The Court is going to be sensitive to  
15 that. I can't make a call without having it in front of  
16 me. But the Court, as to this hiring of counsel issue,  
17 and as to whether or not that has anything to do with  
18 further delay --

19          MR. DAVIS: Your Honor, I can represent that to  
20 my knowledge -- and Mr. Stencil has never made a secret  
21 of when he was seeking additional counsel -- that that is  
22 not something he is looking to do at this time. I feel  
23 quite confident that Mr. Anderson will not be making an  
24 appearance. My understanding is that there is no efforts  
25 at this time to retain additional counsel.

1           THE COURT: All right. Anybody else want to jump  
2 in?

3           MR. HIRSCHHORN: On that issue or any issue?

4           THE COURT: On any issue.

5           MR. HIRSCHHORN: The only potential monkey  
6 wrench, Judge, is the one I sort of hinted at in my  
7 motion, and that is the possibility of a severance.  
8 Mr. Duke has provided me with a list of 19 witnesses --  
9 actually, 22 witnesses because he has included three  
10 of the defendants, because he didn't understand this is  
11 not a civil case where you just get to call people. I am  
12 exploring whether or not I can, in good faith, file a  
13 motion for severance on the grounds of antagonistic  
14 defenses or, even if the defense is not antagonistic,  
15 whether I need a separate trial because I want to extract  
16 certain evidence from Mr. Stencil, possibly from  
17 Mr. Lewis, and also from --

18          THE COURT: You'll probably never have a  
19 conspiracy trial if we did everybody together. Everybody  
20 would be severed.

21          MR. HIRSCHHORN: I understand that, Your Honor.

22          THE COURT: Defendants would say, Judge, I want to  
23 call so-and-so, and he's going to say something good  
24 about me. And then when the time comes, well, maybe he's  
25 not going to say something good about me.

1           MR. HIRSCHHORN: I haven't had the discussions  
2 with the proposed witnesses's lawyers here yet because  
3 I'm trying to sort out through the independent witnesses  
4 whether there is a viable motion for severance.

5           THE COURT: We'll certainly listen to you when you  
6 make it.

7           MR. HIRSCHHORN: I know you will. But I just  
8 wanted you to know I'm working on that and will get it to  
9 you -- as expeditiously to you as possible if that's what  
10 we decide to do.

11          THE COURT: Okay. I need to find out all this  
12 information with regard to the -- to the condition of  
13 Scott's client, first of all, with regard to that to and  
14 decide about that severance. I also need to hear about,  
15 J. P., your guy and as to whether or not that's going to  
16 throw a wrench into the September trial term or not.  
17 Those are the first two things that I need to see, and  
18 then I'll deal with anything additional Mr. Hirschhorn  
19 brings with regard to severance or whatever.

20          I've got a couple of cases to try here and would  
21 like to get them both tried but certainly would want to  
22 try one of these cases if possible. It sounds like the  
23 government's ready to go.

24          MR. GSELL: Does Your Honor have a date you would  
25 like the information -- I'm sorry. Does Your Honor have

1 a date you would like the information from Mr. Lewis's  
2 doctor by?

3 THE COURT: Yeah. If you're going to talk to him  
4 next Monday I'd like it ASAP after that.

5 MR. GSELL: Okay.

6 THE COURT: I mean I realize that this is not --  
7 this will not be his most lucrative job in preparing that  
8 but we do need it. And, you know, if it's sufficiently  
9 detailed and the Court doesn't have any other questions  
10 it might save him a trip over to the courthouse down  
11 there.

12 MR. GSELL: Okay.

13 THE COURT: I'd like to get it ASAP because that's  
14 a big deal in this case as to what we're going to do.  
15 Now I'm not going to rule on that if we continue it for  
16 Mr. Stencil. If we do that, if we're going to have to  
17 continue it for another defendant, then we'll just leave  
18 it together because your client's issue may resolve  
19 itself or not depending on, you know, going to January.  
20 But the longer he's charged the less chance he's going to  
21 have to be on the list. I don't know whether they put  
22 you on the list if you lose and are in prison or not.

23 MR. GSELL: My understanding, Your Honor, is that  
24 the issue is independently done. They looked at him and  
25 decided with the charges, and if he was going to go to

1 prison, he would not get the -- if there was a chance he  
2 would not get the appropriate care for a donated kidney,  
3 they don't like risking a donated kidney under those  
4 circumstances. That's why they took him off the list.

5 THE COURT: They do pretty well in federal prison  
6 on most medical stuff. We certainly don't want this to  
7 be a death sentence. I don't believe the death penalty  
8 is in play for your client at all so we don't want that  
9 to occur.

10 MR. GSELL: Correct.

11 MR. HIRSCHHORN: Judge, if I understand what  
12 you're saying --

13 THE COURT: Yes, sir.

14 MR. HIRSCHHORN: -- we're going to get medical  
15 information for you to review --

16 THE COURT: Next week.

17 MR. HIRSCHHORN: -- on behalf of Mr. Lewis.

18 THE COURT: Thankfully, having this hearing today,  
19 we'll get that next week. So we can still -- September  
20 is still in play. If it goes away, it goes away not  
21 because we had the hearing too late but because of these  
22 issues.

23 MR. HIRSCHHORN: We're waiting on Mr. Stencil's  
24 medical.

25 THE COURT: I've got to hear what happened with

1 him.

2 MR. HIRSCHHORN: Does the Court -- I mean,  
3 scheduling-wise, if you're going to wind up putting it  
4 over, what term are you looking at? I mean some of it  
5 will depend on whether he's severed out or not and what  
6 Mr. Stencil's position is -- his physical position is.

7 THE COURT: I don't know. We'll have to see. It  
8 will be the week of Thanksgiving, or it will be December  
9 or January. We'll have to talk about that. There will  
10 be speedy trial issues and those kinds of things we will  
11 be talking about. The defendants would have some say-so  
12 in there if the Court were to decide that November was  
13 not a good time. I don't like to have juries go out on  
14 Fridays because I don't want date night or anything else  
15 to interrupt the process of deliberation and have that  
16 one that you've convinced that your client's not guilty  
17 to give up the holdout because they've got a really good  
18 Tinder opportunity.

19 MR. HIRSCHHORN: You mean the one I convinced the  
20 government hadn't met its burden of proof.

21 THE COURT: Exactly.

22 MR. HIRSCHHORN: There is a distinct difference.

23 THE COURT: There is. There is. By the same  
24 token, I'm not sure I want to be trying too much around  
25 Thanksgiving.

1           MR. HIRSCHHORN: So do we have -- can we have  
2 sort of like a control date or something? I mean I'm  
3 just -- my practice is a lot different today than it was  
4 back in the day, Judge. I have very few cases. I just  
5 like to know when and where to go.

6           THE COURT: Right now it's September. If we go  
7 off after September we'll quickly decide when that's  
8 going to be. It's either going to be the -- it's either  
9 going to be -- probably, if it's the week of Thanksgiving  
10 the only thing that would happen would be we'd select a  
11 jury and we'd go home and come back after Thanksgiving  
12 and try the case. If it's the -- if it goes -- or else  
13 it will go to January. So we'll talk about that.

14          MR. HIRSCHHORN: Okay.

15          THE COURT: We'll talk about that. That's a  
16 little problematic. I'm trying to move my terms to the  
17 first of the month -- well I think I'm going to be able  
18 to. We really have a courtroom problem. With things  
19 switching around, I think if I can get Judge Whitney and  
20 Judge Conrad -- Frank Whitney moved upstairs -- we're  
21 building a new building in the back so he's moved  
22 upstairs because they're going to be essentially  
23 destroying that office where he was. And Ken Bell is  
24 coming in.

25          If Ken and I can have Courtroom 1 on the first

1 floor we can work that out and I can try cases the first  
2 part of the month and then they can take Courtroom 2,  
3 which is our Potter courtroom, our ceremonial courtroom.  
4 Now when we get the new courthouse we're going to have  
5 courtrooms to spare, including a Jeffersonian courtroom  
6 that Judge Conrad loves from up in Virginia where the  
7 judge sits up here, the jury sits below him looking at  
8 the witness, the witness is there in a dock, and the  
9 attorneys are -- everybody's firing things at the  
10 witness.

11 MR. HIRSCHHORN: That's very -- is the defendant  
12 still in the courtroom?

13 THE COURT: Oh, yeah. The defendant is standing  
14 there. Oh, yeah. The witness is there, the defendant is  
15 there -- it's an interesting concept. I'm going to try  
16 it some time but, you know, that's been around since the  
17 1700s and it's not caught on nationally. So we are going  
18 to have one. We are going to have one courtroom there,  
19 and Bob is going to do that one. He loves that, so he's  
20 going to do that courtroom. Then we'll be loaded with  
21 courtrooms for a while.

22 MS. OWEN: What about Statesville?

23 THE COURT: Yeah, we could try it in Statesville

24 MS. OWEN: I wasn't requesting that. I was not  
25 making that request.

1           THE COURT: Yeah. We are going to try cases in  
2 Statesville during that period of time. We thought we  
3 might be able to use Mecklenburg but, apparently,  
4 Mecklenburg doesn't have room for the judges they've got  
5 and for the cases they've got. They're all crammed up  
6 down there even in that beautiful new courthouse.  
7 They've got a great courthouse down there and it's  
8 already obsolete in terms of space.

9           All right. So that's where we are. We'll know  
10 something pretty quick because you -- I need you to get  
11 that stuff in ASAP. You can do that.

12          MR. DAVIS: We will move on that.

13          THE COURT: He can have this next week. If you  
14 can have it then I can digest it and have another  
15 conference by phone and make some decisions about  
16 September.

17          MR. DAVIS: We will aim to get that done as  
18 quickly as possible, and we'll have something next week.  
19 The only difficulty here is this is entirely emergency  
20 room treatment that was done through the Marshals'  
21 Service and, you know, we don't exactly know where all  
22 the moving parts are and who is going to be treating him  
23 going forward. But we will pull together everything we  
24 can possibly pull together and present that to the Court,  
25 regardless.

1           THE COURT: If they put a stent in there probably  
2 was some kind of cardiac event. So we need to -- but I  
3 do need to find out what his availability is for late  
4 September.

5           MR. DAVIS: Absolutely.

6           THE COURT: Very good. Okay. Anything else that  
7 we need to talk about?

8           MR. GSELL: Not for Mr. Lewis.

9           THE COURT: Okay. Very good. Thank you for  
10 calling in, and good luck. I hope justice prevails in  
11 your trial one way or the other.

12           Do we have a time estimate from the government so  
13 we can plan for possibly two trials?

14           MR. FENTON: We think it will take ten days.

15           MR. HIRSCHHORN: That's take not taking into  
16 account defense evidence.

17           MR. FENTON: We have 15 to 18 witnesses.

18           THE COURT: That won't take two weeks. You're  
19 calling 15 to 18 witnesses? We'll get through your  
20 evidence and it will take two weeks.

21           MR. HIRSCHHORN: Yeah.

22           THE COURT: We'll have the time. We'll probably  
23 have about three weeks for this trial. If we have to --  
24 it will take as long as it takes, but I think we'll be  
25 able to bleed over. I'll warn the other judges it may

1 bleed over to one of their times.

2 MR. SMITH: Just to make -- this is Jeremy Smith,  
3 attorney for Ludmila Stencil. Just to make Your Honor  
4 aware, Judge Conrad and I have a trial set for two weeks  
5 after the date that this one is supposed to start in  
6 September. It's a human trafficking case in front of  
7 Judge Conrad that I am 95 percent sure is going to be a  
8 trial, and October the 1st, I believe, is the docket  
9 call. So, I mean, I'll let you-all fight over me but I  
10 just wanted to make you aware of that, Your Honor.

11 THE COURT: If we've got you in trial then they'll  
12 just have to wait while we finish up with you.

13 MR. SMITH: That's fine.

14 THE COURT: Hopefully, it will go a little quicker  
15 than we think. Usually, the trials do. I mean, you  
16 know, they usually go quicker you think they do. I'd  
17 start winnowing the evidence down, when I was the  
18 prosecutor, to try to get it down before I lost the jury.  
19 I went, you don't want to lose them by having too much.

20 MR. SMITH: Yes, sir. I just wanted to bring that  
21 up.

22 THE COURT: I let people try their case. It's a  
23 little different. Everybody has a different style. Some  
24 jump in there and with a little more --

25 MR. HIRSCHHORN: You were looking for more

1 flamboyant than others.

2 THE COURT: Some are a little more flamboyant than  
3 I am.

4 MS. OWEN: To add to what Mr. Smith says. I had  
5 started to mention this earlier when I was concerned  
6 about the trying of every other day or every three days.  
7 On October 5th I've secured -- I've filed a Notice of  
8 Unavailability. It is not nearly as important as  
9 Mr. Smith's trial but it is my 20th wedding anniversary  
10 trip to Paris.

11 MR. SMITH: I disagree. That's more important,  
12 but that's just my opinion.

13 MS. OWEN: There are consequences if I delay the  
14 trip.

15 THE COURT: If the trial goes long at least we'll  
16 always have Paris.

17 (Laughter.)

18 MR. HIRSCHHORN: I was sweating out verdicts on  
19 my 10th and 25th wedding anniversaries.

20 THE COURT: It happens. We've got some serious  
21 issues we need to look at, and we'll know more next week.  
22 But if we -- let's wait and see what happens. Let's  
23 don't speculate. We may be able to get this thing tried  
24 in September.

25 All right. Anything else?

1 MR. GSELL: No, Your Honor. Thank you.

2 THE COURT: All right. Thank you. Very good.

3 (Off the record at 1:28 p.m.)

4 **CERTIFICATE**

5 I, Tracy Rae Dunlap, RMR, CRR, an Official Court  
6 Reporter for the United States District Court for the  
7 Western District of North Carolina, do hereby certify  
8 that I transcribed, by machine shorthand, the proceedings  
9 had in the case of UNITED STATES OF AMERICA versus ROBERT  
10 LESLIE STENCIL, ET AL, Criminal Action Number  
11 3:16-CR-221, on August 17, 2018.

9 In witness whereof, I have hereto subscribed my  
10 name, this 15th day of April, 2020.

11 \_\_/S/\_\_Tracy Rae Dunlap\_\_  
12 TRACY RAE DUNLAP, RMR, CRR  
13 OFFICIAL COURT REPORTER  
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